

## Internal Revenue Service

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Association =  
Trust =  
State =  
Year 1 =  
Year 2 =  
Year 3 =

Dear :

This letter responds to a letter from your authorized representative dated February 18, 2015, and subsequent correspondence submitted on behalf of Association, requesting a ruling that the Association's income is excludable from gross income under Internal Revenue Code (IRC) § 115; and Association is not required to file annual information returns on Form 990. Association represents the facts as follows.

Association is a State nonprofit corporation. In Year 2, Association received a determination from the Internal Revenue Service (IRS) that it was described in IRC § 501(c)(6) and was exempt from tax under IRC § 501(a). In Year 3, the Internal Revenue Service issued Association a letter ruling concluding that its income was excludable from gross income under § 115 and was not required to file Form 990.

Association's bylaws provide that regular membership in the Association is limited to Special Districts. Special Districts are political subdivisions of the State devoted to providing specific services to the citizens of State, such as irrigation, port, fire, and sanitary services. The bylaws further provide that associate membership is open to any (1) intergovernmental agency, department, council, or like entity created under State statute or (2) statewide or regional associations of local government or any other public entities which qualify as political subdivisions or municipal, quasi-municipal or public corporations under State statute.

The Association is governed by a board of directors, which consists of one representative from each class of member; fire, sanitary, water, irrigation, port, park and recreation; five at-large representatives, at least three shall be from regular members other than the previous six classes; and the immediate past president.

Association engages in the following activities for the benefit of its members: (1) develop and disseminate information as appropriate and to act as a clearinghouse for general and specific information to improve efficiency in the provision of all types of public service; (2) cooperate with State congressional delegation in items of common interest in matters of national legislation; (3) provide information and assistance in matters of mutual concern including: insurance, risk financing and risk management, grant assistance, grant management and negotiations with grantor agencies, budgets and audit assistance, group purchasing, government sales assistance and public contracting, group benefit and human resources programs, financial services and other similar association programs; (4) promote understanding with other units of local government and the public in fulfilling the special districts role as a responsible unit of government; and (5) foster the development of and cooperate with organizations serving classes of special districts.

In addition, Association plans to form a single member LLC to perform the following services for its members for a fee; providing assistance to its members with financial matters which include the following: untangling accounting fiascos, advising on accounting software programs, providing advice on procedures for detecting and protecting against fraud, providing assistance in submitting ballot measures, providing advice on budgeting for capital expenditures, advising members on the issuance of municipal bonds.

In Year 1, Association established Trust for the purpose of providing self-insured insurance pools and group purchase of medical and disability insurance to Association's members. The self-insurance program has provided property, tort, and workers compensation self-insurance pools for governmental entities that are members of the Association. The group purchase program allows Association's members to obtain medical, dental, and disability insurance through a group association plan.

Association acts as the Sponsoring Member of the Trust which includes providing its Executive Director to serve as the Trust Administrator and act as the chief operating officer of the Trust. Association receives an annual distribution from the Trust for its role as the Sponsoring Member. In addition, Trust will engage the Association to assist the Trust and its insurance pools with administrative and management services pursuant to the services agreement.

Association has entered into a Shared Services Agreement with other self-insurance pools in State to provide risk management and risk financing services. Under the

agreement, the organizations and their self-insurance pools have agreed to participate with Association in the cooperative sharing of resources to avoid unnecessary duplication of efforts and to maximize the operating efficiency and effectiveness in service delivery. In addition, Association will provide administrative services for a fee to other organizations that have received an IRC § 115 ruling.

Association has represented that all of its income is from the following sources: political subdivisions of State, an organization that is an integral part of political subdivisions of State, or an entity whose entire income is excludable from gross income under IRC § 115. Association's articles provide that no part of its earnings or other assets shall inure to the benefit of any director or individual. Upon dissolution of the Association, the balance of all money received by the Association from its operations, after payment in full of all debts and obligations, shall be distributed to all special districts which were members of the Association within the 12 months preceding the date of dissolution.

### **Law and Analysis**

IRC §115(1) provides that gross income does not include income derived from any public utility or the exercise of any essential governmental function and accruing to a state or any political subdivision thereof.

Rev. Rul. 77-261, 1977-2 C.B. 45, holds that income generated by an investment fund that is established by a state to hold revenues in excess of the amounts needed to meet current expenses is excludable from gross income under IRC § 115(1), because such investment constitutes an essential governmental function. The ruling explains that the statutory exclusion is intended to extend not to the income of a state or municipality resulting from its own participation in activities, but rather to the income of an entity engaged in the operation of a public utility or the performance of some governmental function that accrues to either a state or political subdivision of a state. The ruling points out that it may be assumed that Congress did not desire in any way to restrict a state's participation in enterprises that might be useful in carrying out projects that are desirable from the standpoint of a state government and that are within the ambit of a sovereign to conduct.

Rev. Rul. 90-74, 1990-2 C.B. 34, holds that the income of an organization formed, funded, and operated by political subdivisions to pool various risks (e.g., casualty, public liability, workers' compensation, and employees' health) is excludable from gross income under IRC § 115(1) because the organization is performing an essential governmental function. The revenue ruling states that the income of such an organization is excluded from gross income so long as private interests do not participate in the organization or benefit more than incidentally from the organization. The benefit to the employees of the insurance coverage obtained by the member political subdivisions was deemed incidental to the public benefit.

Association engages in various activities to assist local governmental units of State in providing services to the citizens of State. Association performs various services for its members that would otherwise be performed by its members. Association provides services that reduce the operating costs for its members. Engaging in these activities constitutes the performance of an essential government function within the meaning of IRC section 115(1). See Rev. Rul. 90-74 and Rev. Rul. 77-261.

The Association's income accrues to its members who are special districts or a public body in State. No private interests will participate in, or benefit from, the operation of the Association other than as providers of goods or services to its members. In no event, including dissolution, will Association's assets be distributed or revert to any entity that is not a state, a political subdivision of a state, or another entity the income of which is excluded from its gross income by application of IRC § 115.

Based solely on the facts and representations submitted by Association, we conclude that:

1. Because the income of Association derives from the exercise of an essential governmental function and will accrue to a state or a political subdivision thereof, Association's income is excludable from gross income under IRC §115(1).

IRC § 6033(a) generally provides that every organization exempt from tax under IRC § 501(a) shall file an annual return stating its gross income, receipts and disbursements and such other information as the regulations require.

IRC § 6033(a)(2)(B) provides that the Secretary may relieve any organization from filing such return when he determines that such filing is not necessary to the efficient administration of the internal revenue laws.

Treas. Reg. § 1.6033-2(a)(2)(i) provides that every organization exempt from taxation under section 501(a) and required to file a return under IRC § 6033 shall file its annual return on Form 990.

Rev. Proc. 95-48, 1995-2 C.B. 418, exempts an organization that is an affiliate of a governmental unit from the requirement of filing Form 990, *Return of Organization Exempt From Income Tax*. Section 4.02 of Rev. Proc. 95-48 provides that an organization is treated as an affiliate of a governmental unit if it is described in IRC § 501(c) and it meets the requirements of either Section 4.02(a) or (b). Section 4.02(a)(i) of Rev. Proc. 95-48 states that an organization is treated as an affiliate of a governmental unit if it has a ruling or determination from the Service that its income, derived from activities constituting the basis for its exemption under IRC § 501(c), is excluded from gross income under IRC § 115.

Association is an affiliate of a governmental unit within the meaning of Section 4.02(a)(i) of Rev. Proc. 95-48.

Based solely on the facts and representations submitted by Association, we conclude that:

2. Because Association is an affiliate of a governmental unit within the meaning of Section 4.02(a)(i) of Rev. Proc. 95-48, Association is not required to file Form 990.

Except as expressly provided herein, no opinion is expressed or implied as to the federal tax consequences of the facts described above under any other provision of the IRC. Specifically, no opinion is expressed concerning whether the activities as described above will adversely affect Association's tax exempt status under IRC § 501(c)(6).

This ruling is directed only to the taxpayer requesting it. IRC § 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

/S/

Casey Lothamer  
Branch Chief  
Exempt Organizations Branch 2  
(Tax Exempt & Government Entities)